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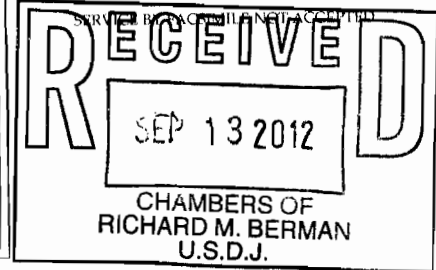
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12 September 2012

Via Federal Express

Honorable Richard M. Berman
United States District Court
Southern District of New York
40 Centre Street, Courtroom 706
New York, NY 10007

MEMO ENDORSED ₇₃

Re: *Archie Comic Publications, Inc. v. Kenneth Penders, II a/k/a Ken Penders*
Civil Action No. 10-cv-8858 (RMB)
Our File: 27262.1

Dear Judge Berman:

This firm represents Plaintiff Archie Comic Publications in the above referenced matter. This letter is written jointly on behalf of Plaintiff and Defendant Ken Penders, as well as the mediator assigned to this matter by the Southern District of New York Mediation Program (whose identity is confidential pursuant to Local Civil Rule 83.9(l)(1)). Counsel for Penders and the mediator have reviewed and approved this letter.

On August 8, 2012 Your Honor referred this matter to the Southern District Alternative Dispute Resolution Program for mediation, and converted the pretrial conference to a status conference, which was scheduled for September 10, 2012, at 10 AM. D.E. 151. On September 6, 2012, the Court endorsed the parties' letter of September 5, 2012, and continued the status conference until October 3, 2012. D.E. 152. In their letter to the Court requesting adjournment of the status conference, the parties explained to the Court that mediation had not yet been scheduled due to the summer holidays of counsel and clients, and coordination with the mediator; counsel for Penders also notified the Court that he is required to be in Florida for another matter from September 17, 2012 until September 21, 2012.

Last week, upon returning from the Labor Day holiday, and after the Court granted this adjournment, the parties continued their efforts to schedule mediation, and dates had been proposed for September 25, 26, 27 or 28 by counsel for Penders. Counsel for Archie was working toward confirmation of September 28th (some of these dates are Yom Kippur), but the mediator has now indicated he has a conflict with the 28th.

In the meantime, yesterday, on September 11, 2012, a "First Mediation Session" was entered on the docket, and scheduled for next Tuesday, September 18, 2012 at 9:30 a.m. Counsel was not consulted prior to scheduling of this mediation session for September 18, 2012. Neither counsel nor the parties are available on September 18; counsel for Penders previously alerted the Court to his unavailability during this time in the parties' letter to the Court on September 5, 2012 (D.E. 152); and September 18 is Rosh Hashanah. Counsel immediately alerted the mediator to the foregoing and suggested that an extension of time is available under LR 83.9. The mediator then requested that counsel secure an extension of the scheduling of the First Mediation Session and suggested he is available the first week of October. Counsel are presently conferring with their clients about the first week in October.

LR 83.9(g)(1) provides that the mediator shall schedule the first mediation session within thirty (30) days of the assignment of the mediator by the Mediation Supervisor, but in the event that the mediation cannot begin within that time, the assigned mediator shall promptly notify the Mediation Supervisor of the date by which the mediation will begin and the reason for the delay. Counsel writes this letter at the request of the mediator.

Counsel and the mediator are working diligently to schedule the First Mediation Session, but this cannot be conducted on September 18, 2012, as has been entered on the docket. Accordingly, at the request of the mediator and on consent of all parties and counsel, we hereby request that the Court adjourn the First Mediation Session presently entered on the docket for September 18, 2012, to a date to be determined, but no later than October 31, 2012. Given the foregoing, the parties also request that the status conference presently scheduled for October 3, 2012, be continued to a new date in early November at the Court's convenience.

All counsel and the mediator have conferred on the present application, and have consented to this request.

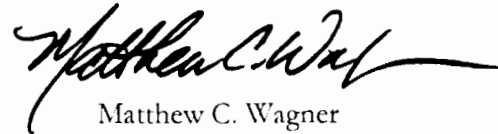
Pursuant to Your Honor's Individual Rule 1(E), the parties provide the following information:

- (1) the original date for the status conference was September 10, 2012; this was continued to October 3, 2012; the original date of the First Mediation Session was entered on the docket for September 18, 2012;
- (2) this is the second request to continue the status conference and the first request to continue the First Mediation Session;
- (3) the previous request to continue the status conference was granted (D.E. 152); and this section is not applicable to the request for adjournment of the First Mediation Session; and
- (4) this request with regard to the status conference and mediation is on consent of all parties to the action and the assigned mediator.

Accordingly, the parties and the mediator hereby jointly request that the Court adjourn the First Mediation Session presently entered on the docket for September 18, 2012 (D.E. dated September 11, 2012) to a date to be determined, but no later than October 31, 2012, and continue the status conference presently scheduled for October 3, 2012, to a new date in early November at the Court's convenience.

Thank you for your consideration.

Very truly yours,



Matthew C. Wagner

MCW/

Cc: Phil Daman, counsel for Defendant, via email
Assigned Mediator, via email
Mediation Supervisor, via email

The mediation session should be rescheduled
forthwith to a date not later than
10/24/2012. The conference scheduled for
10/3/2012 is adjourned to 10/30/2012
at 9:00 a.m.

SO ORDERED:

Date: 9/13/2012



Richard M. Berman, U.S.D.J.